

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1359 of 1984
with
SPECIAL CIVIL APPLICATION No 4218 of 1992
with
SPECIAL CIVIL APPLICATION No 4695 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

GIANI RAM RAMCHANDRA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1359 of 1984
MR IS SUPEHIA for Petitioners
MR VM PANCHOLI, AGP for Respondent Nos. 1 & 2
MR NN PRAJAPATI for Respondent No. 3, 4
-

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/02/2000

COMMON CAV JUDGEMENT

The petitioners of these petitions were at the relevant time working as constables in the Gujarat State Reserved Police Force (hereinafter to be referred to as "the SRP Force"). In Special Civil Application No. 1359

of 1984, petitioner No. 1 is the President of SRP Constable Association of Group 9 and also the Joint Secretary of the Gujarat State Police Constable Association which is registered and recognized by the Government of Gujarat. Petitioner No. 2 is the General Secretary of SRP Constable Association of Group 9 and also Joint Secretary of the Gujarat State Police Constable Association. The other petitioners were at the relevant time working as constables.

2. In all these petitions, the petitioners have challenged the office memorandum dated 22.8.1977 issued by the Dy. Inspector General of Police, Armed Units, Gujarat State, Ahmedabad regarding the qualifying tests for promotion in SRP Force. The petitioners have also prayed for a declaration that the qualifying examinations taken by the respondents-State of Gujarat and Inspector General of Police, Gujarat State and their subordinates for SRP constables in the State of Gujarat for promotion to the posts of Head Constables Grade-I and Grade II are illegal and ultra vires. The petitioners have also prayed for a direction not to promote any such constable on that basis alone to the post of Head Constable Grade I and II, if not already promoted and the petitioners have also prayed for a direction to the respondents to promote the SRP constables in the State as if there is no qualifying examination prescribed for constables for promotion to the post of Head Constable Grade I and II. The petitioners have also challenged Rules 57 to 60 of the Bombay State Reserve Police Force Rules, 1959 (hereinafter referred to as "the SRP Rules") and have prayed for a writ for holding that promotions in the SRP Force from the constables to Head Constables Grade I and II should be governed by the Head Constables Grade I and II (Armed Branch, Unarmed Branch and Women Branch) Recruitment (Amendment) Rules, 1981.

3. Under the Bombay Police Act, 1951 the police force is constituted and is divided into three branches known as Armed Branch, Unarmed Branch and Women Branch. Under the Bombay State Reserve Police Act, 1951 (hereinafter referred to as "the Act" or "the SRP Act"), the State Reserve Police Force is divided in separate units, each unit to be called a Group. The location of each group and the number of such groups is decided by the State Government from time to time. Section 3 of the Act provides that the superintendence and control over the Reserve Police Force shall, subject to the authority of the State Government, be exercised and carried on or be administered through the Inspector General of Police or through an Additional Inspector General of Police who

may be assisted by one or more of the Deputy Inspector Generals of Police selected from time to time by the State Government. Ordinarily the superintendence and control over the SRP Force is exercised and carried on by the Additional Director General of Police (Armed Units). Each group is headed by the Commandant equivalent to a District Superintendent of Police, assisted by Assistant Commandant equivalent to a Dy.S.P. Each group has two battalions consisting of four Active Companies each. The battalion is commanded by the Battalion Commander who is of the rank of an Inspector of Police. Each Active Company is commanded by a Company Commander who is equivalent to a Sub-Inspector of Police. Each Active Company consists of three Platoons. Each Platoon is commanded by Platoon Commander (Jamadar). Each Platoon has sections and each section is commanded by a Section Commander (Havildar). The Company Commanders, Platoon Commanders and section Commanders are responsible for the efficiency, well-being and health of the men under their command.

4. Chapter IV of the SRPF Rules provides for the mode of recruitment of various categories of the personnel in the SRP Force including constables and head constables. Chapter XI of the Rules provides for promotions and examinations. In these petitions, we are concerned with Rules 56 to 60 which read as under :-

"56. Promotion to the rank Assistant Station Commanders (Naiks), Section Commanders (Havildars), Platoon Commanders (Jamadars) and Company Commanders (Sub-Inspectors) shall be made from amongst those who are fit and have passed the qualifying examinations. In judging the fitness for promotion the candidate's record of service character and ability to command the unit, of which he is going to be incharge shall

57. The details regarding the rank of candidates who can appear for various qualifying examinations and the personnel of the Examination Board are given below :-

| Sr. Rank of the Examination Personnel of the Board of | |
|-------------------------------------------------------|-----------|
| No. Examinee. for promotion | Examiners |

of -

- | | |
|----------------------------|-----------------------|
| minimum service Commanders | not below the rank of |
| of 3 years. (Naiks). | Police Inspectors. |

Commandant and

| | | |
|----|----------------|-------------|
| 3. | Section | Platoon |
| | Commanders | Commanders |
| | with a mini- | (Jamadars). |
| | mum of two | |
| | years' service | |
| | and Havildar | |
| | Majors. | |

[illegible]

TABLE II

Qualifying examination for promotion
to Section Commanders

xxx xxx xxx
xxx xxx xxx

TABLE III

Qualifying examination for promotion
to Platoon Commanders

xxx xxx xxx
xxx xxx xxx

TABLE IV

Qualifying examination for promotion
to Company Commanders

xxx xxx xxx
xxx xxx xxx

5. In the year 1977, the then Deputy Inspector General of Police (Armed unit), Gujarat State who was heading the SRP Force in the State issued office memorandum dated 22.8.1977 which reads as under :-

No. A/3294
Office of the Dy.I.G. of
Police, Armed Units, G.S.,
Ahmedabad - 16.

Dated : 22nd August, 1977.

MEMO

Sub: Qualifying tests for promotion in
SRP Force.

Promotions and examinations in the SRPF
groups are laid down in Rule 57 of the SRPF Rules
1959 and the table laid down in Rule 60. The
applicability of these rules was under
examination. However, it is found that in the
present set up of SRP, it is no longer possible to
.J

In order, therefore, to regulate rules for
 promotion to the rank of H.C. Grade II, HC Grade I
 and PSI, the following instructions are hereby
 issued :-

2. The details regarding eligibility of
 examined personnel of the Board etc. are given
 below :-

| | |
|-------------------------------------------------------|-------------|
| Sr. Rank of the Examination Personnel of the Board of | |
| No. Examinee. for promotion | Examiners |
| | to the rank |

1. Constable H.C. Grade II Assistant Commandant,
 with the assisted by 2 officers
 minimum service not below the ra
 of 5 years. Police Inspector.

2. H.C. Grade II H.C. Grade I Commandant assisted by
 with 2 years Assistant Commandant and
 continuous Officer not below the
 service. rank of Police Inspector.

3. H.C. Grade I Platoon The DIGP in charge of
 with 2 years Commanders SRP assisted by 2
 continuous i.e. P.I. Commandants nominated
 service. by the IGP.
 years' service

The qualifying examination for promotion to the
 rank of H.C. Grade II, H.C. Grade I and Platoon
 Commander (i.e. PSI) shall be in three parts.

TABLE I

Qualifying examination for promotion
 to rank of Head Constable Grade II.

xxx xxx xxx
 xxx xxx xxx

TABLE II

Qualifying examination for promotion
to the rank of Head Constable Grade I.

xxx xxx xxx
xxx xxx xxx

TABLE III

Qualifying examination for promotion
to the rank of Platoon Commander (i.e. PSI)

xxx xxx xxx
xxx xxx xxx

Necessary draft rules on above lines for
amending the existing rules pertaining to the
promotion and holding of examination etc., in SRP
contained in Rule 57-60 of SRPF Rules have been
sent to Govt. The instructions given in this
circular should be followed strictly.

The instructions will come into force from
the date of issue of this Memo.

Sd/-

Dy. Inspector General of
Police, Armed Unit,
Ahmedabad."

6. In this group of petitions, the petitioners have challenged the qualifying examinations being held by or on behalf of the respondents for promotions of constables in the SRP Force to the higher cadres on the ground that the examinations held in accordance with the instructions contained in the said Memorandum dated 22.8.1977 cannot be treated as qualifying examinations held in accordance with Rules 56 to 60 of the Bombay State Reserve Police Force rules, 1959 and, therefore, the respondents be directed to promote constable in the SRP Force to the higher posts of Head Constable Grade II and further promoted to the post of Head Constable Grade I on the basis of seniority-cum-fitness and in accordance with the Rules for promotion to the posts of Head Constables Grade II and Head Constable Grade I in the Armed branch of the State Police Force.

7. Before proceeding to narrate the contentions urged

on behalf of the petitioners, it is necessary to state at the outset that the draft Rules referred to in the aforesaid memorandum were not finalized by the State Government until the petitions came up for final hearing. This Court had, therefore, adjourned the hearing of these petitions on a number of occasions to enable the respondents to produce the amended Rules on the record of these petitions. Finally, on 3.7.1999 the State Government has issued the notification containing the Bombay State Reserve Police Force (Amendment) Rules, 1999 for amending Rules 56 to 60 and the tables below the said Rules regarding qualifying examinations for the appointment to the post of Head Constables Grade II, Head Constables Grade I, Platoon Commander or Armed Police Sub-Inspectors.

Rules 56 to 60 as amended by the said Amendment
Rules read as under :-

"56.(1) Appointment to the post of Head Constable Grade II, Head Constable Grade I, Platoon Commander or Armed Police Sub-Inspector shall be made :-

(a) in case of Head Constable Grade II, by
promotion of a person of proved merit and efficiency from amongst the persons working in the cadre of constables on the basis of seniority.

(b) in case of Head Constable Grade I, by
promotion of a person of proved merit and efficiency from amongst the persons working in the cadre of Head Constables Grade II on the basis of seniority, and

(c) in case of Platoon Commander or Armed Police Sub Inspector, by promotion of a person of proved merit and efficiency from amongst the person working in the cadre of Head Constable Grade I on the basis of seniority.

(2) To be eligible for appointment by
promotion to posts mentioned in sub rule (1), a candidate shall.J

qualifying examination referred to in rule 60.

57. The persons specified in column (2) shall
be eligible to appear in the examination for the

4. In the said rules, for rules 59 to 60, the following shall be substituted, namely :-

"59. The qualifying examination referred to in rule 57 may be held once in a year at such place and on such date as may be fixed by the members of the respective Board."

60.(1) The syllabus of the qualifying examination for promotion to the post of Head Constable Grade II, Head Constable Grade I and Platoon Commander or Armed Police Sub Inspector shall be such as specified respectively in Table I, II and III below :-

(2) The candidate appearing at qualifying examination specified in the table shall require to pass the examination with 50 per cent of marks in each PART and 60 per cent marks in aggregate.

TABLE I

Qualifying examination for promotion to the post of Head Constable Grade II

xxx xxx xxx
xxx xxx xxx

TABLE II

Qualifying examination for promotion to the post of Head Constable Grade I.

xxx xxx xxx
xxx xxx xxx

TABLE III

Qualifying examination for promotion to the post of Platoon Commander or Armed Police Sub Inspector

xxx xxx xxx
xxx xxx xxx

8. After perusing the aforesaid Amendment Rules, Mr IS Supehia, learned counsel for the petitioners has urged

the following contentions :-

- (i) The Amendment Rules of 1999 are prospective and, therefore, the challenges made in the present group of petitions to the qualifying examination held so far will still survive.
- (ii) The Bombay State Reserve Police Force Rules, 1959 are framed under Section 21 of the Bombay State Reserve Police Force Act, 1951 and, therefore, Rules 56 to 60 as contained in the Rules prior to amendment held the field before 3.7.1999 and the said statutory rules could not have been modified by the Deputy Inspector General of Police (Armed Unit). Hence, the memorandum dated 22.8.1977 was ultra vires the provisions of the Bombay State Reserve Police Force Act, 1951 and the Rules framed thereunder. Hence, the memorandum was illegal and all the qualifying examinations held in accordance with the instructions contained in the said memorandum were also illegal.
- (iii) Since the qualifying examinations held so far were illegal, all the promotions granted on the basis of the results of such qualifying examinations were also illegal and promotions from the cadre of constables to Head Constables Grade II and from the cadre of Head Constable Grade II to the cadre of Head Constables Grade I in the SRP Force in the State are required to be rearranged on the basis of seniority-cum-fitness by looking at the date of joining service in the cadre of constables in the SRP Force and by ignoring the results of the qualifying examinations.

9. On the other hand, Mr VM Pancholi, learned AGP appearing for the respondents has vehemently opposed the petitions and has submitted that the qualifying examinations were held in accordance with Rules 56 to 60 as contained in the SRPF Rules, 1959 prior to amendment and that the instructions contained in the memorandum dated 22.8.1977 were not inconsistent with the statutory Rules which were in force at the relevant time, but the said instructions merely restricted the zone of consideration in view of large number of eligible candidates and supplied more details to the scheme of qualifying examinations and such instructions were necessary to hold the examinations in a more practical and meaningful manner.

The State Reserve Police Force is an entirely

distinct and separate force which a paramilitary force and the same cannot be compared with the regular police force constituted under the Bombay Police Act. Promotions to the posts of Head Constable Grade II and Head Constable Grade I and all other higher posts in the SRP Force are governed by the Rules contained in the SRPF Rules, 1959 and the same cannot be governed by the Rules for promotion to the posts in the Armed branch of the police force constituted under the Bombay Police Act.

10. Since the amendment Rules of 1999 do not appear to be retrospective, the first question which arises for consideration is whether the instructions contained in the memorandum dated 22.8.1977 of the Deputy Inspector General of Police, Armed Units were inconsistent with Rules 56 to 60 in the SRPF Rules, 1959.

11. Mr Supehia has submitted that the memorandum contained instructions which were inconsistent with the Rules in the following respects :-

(i) Under the original Rules of 1957 prior to amendment, a constable with three years service was eligible for appearing at the examination for promotion to the post of Assistant Section Commanders (Naiks) which promotional post is now treated as equivalent to the post of Head Constable Grade II, but by the impugned circular dated 22.8.1977, the eligibility criteria was entirely changed and the constables were required to put in minimum five years service for being eligible for appearing at the qualifying examination. The memorandum thus made the persons eligible under the statutory rules ineligible for appearing at the qualifying examination and, therefore, the memorandum was required to be quashed as illegal and ultra vires.

(ii) The designation of all the promotional posts were changed by the circular without amendment of the rules and, therefore, also the memorandum was illegal.

(iii) Under the Rules prior to amendment, Assistant Section Commanders and constables with a minimum of seven year service were eligible for promotion to the rank of Section Commanders (Head Constable Grade I). By the impugned circular the Dy.I.G.P. took away the right of the constables with seven years experience to appear at the qualifying examination for promotion to the post of Section

Commanders which post is now treated as Head Constable Grade I.

- (iv) Even the syllabus of the qualifying examination and the allotment of marks were also changed by the Dy.I.G.P. through the aforesaid memorandum purporting to change the scheme of the examination rules for which the Dy.I.G.P. had no authority under the law.

12. As far as the first ground of challenge to the circular is concerned, it is true that under the Rules, constables with minimum service of three years were eligible to appear at the qualifying examination while the Dy.I.G.P. instructed to restrict the zone of consideration to constables with minimum service of five years. Now the provision made in the preamended Rules was "constables with minimum service of three years". The Rule by itself, therefore, did not confer any indefeasible right on the constables to appear at the qualifying examination immediately after completion of three years service. All that the rule contemplated even before the amendment was that a constable with less than three years service could not be permitted to appear at the qualifying examination. Apart from this interpretation of the Rule, as per the settled legal position, when the number of eligible candidates as per the rules is large compared to the number of vacancies available, it is open to the appointing authority to curtail the zone of consideration by laying down reasonable criteria. For instance, in the case of Gujarat State Sales Tax Non-Gazetted Employees' Association vs. State of Gujarat & Ors. (Special Civil Application No. 1734/76 decided on 20.12.1976), 1977 GLT 81, this Court speaking through Hon'ble Mr Justice P.D. Desai (as His Lordship then was) laid down as under :-

"It is well-settled that though the Recruitment Rules may prescribe the minimum eligibility qualification, it is competent to an appointing authority to demarcate the field of choice, that is to say, to prescribe some rational screening test by the adoption of which the necessity of calling for interview or for examination, as the case may be, every eligible candidate is eliminated and the zone of selection is restricted to candidates with merit bearing a reasonable proportion to the number of vacancies to be filled up. In other words, though an obligation to consider every qualified candidate may be implicit in the recruitment rules as also in the equal opportunity right enshrined in Articles 14 and 16

of the Constitution, screening a candidate out of consideration at an initial stage of the process of selection is not illegal or unconstitutional, if a legitimate field demarcating the choice by reference to some rational formula is carved out."

This principle was also subsequently enunciated by a Constitution Bench of the Apex Court in *Ashokkumar Yadav vs. State of Haryana*, 1985 (4) SCC 417 and by another decision of the Apex Court in *Parven Jindal vs. State of Haryana*, 1993 (4) Suppl. SCC 70.

Mr Supehia has placed reliance on the decision in *P. Sadagopan vs. Food Corporation of India*, 1997 AIR SCW 2668 for contending that executive instructions cannot be issued in derogation of the statutory regulations. The contention is misconceived because in that case the regulations laid down minimum eligibility criterion of three years service in the lower cadre for promotion to the higher cadre. By executive instructions the authorities had sought to relax the criteria and the Division Bench of the Madras High Court had directed the authorities to grant promotions in terms of such executive instructions. The Apex Court, therefore, set aside the said judgment because executive instructions cannot be issued in derogation of the statutory regulations specifically observing that in view of the fact that the statutory regulations require that experience of three years is a pre-condition to consideration for promotion to the higher post, it would be obvious that any relaxation was in defeasance of the above regulations. Thus, the Apex Court found fault with the decision of the authority to reduce the number of years for eligibility which is just opposite to the fact situation in the present case.

In the instant case also, from the submissions made on behalf of the petitioners themselves, it appears that in the normal course, the constables with less than 10 years service in the SRP Force were not able to get promotions to the higher posts of Head Constable Grade II and, therefore, holding the qualifying examination for all constables with three years service would have meant that a large number of candidates would be required to be examined without any reasonable prospects of even selected candidates being promoted within reasonable time. In this set of circumstances, if the Dy.I.G.P. (Armed Unit) thought it fit to restrict the qualifying examination to candidates who had put in at least 5 years service as constables, it cannot be said that the Dy.I.G.P. had

acted illegally. All that the Dy.I.G.P. had done was to curtail the zone of consideration to ensure that only a reasonable number of candidates were called for the qualifying examination. The criterion laid down by the Dy.I.G.P. cannot be considered to be arbitrary or unreasonable. The consequence of working out the criterion fixed by the Dy.IGP did not exclude the consideration of any constables who were senior. On the contrary, more senior constables were called for qualifying examination and constables with lesser service were not called for qualifying examination.

In view of the fact that the power to appoint Head Constables Grade II is vested in the Group Commandant who is an authority subordinate in rank to the Dy.I.G.P. (Armed Units), it cannot be said that the Dy.I.G.P. had no authority to issue instructions contained in the memorandum dated 22.8.1977. It is true that the Dy.I.G.P. is an authority lower in rank than the State Government who is the Competent Authority for amending the SRPF Rules, but as stated above, since the instructions of curtailing the zone of consideration were not inconsistent with the Rules as explained above, the challenge on the ground of lack of authority cannot survive.

13. The next question about the challenge of designation is required to be considered in the context of the Government Resolution dated 10.4.1973 (Annexure II to the affidavit in reply) filed by Mr B.K. Jha, IPS, Special Inspector General of Police, Armed Units. In the said resolution, it was stated that the permanent and temporary State Reserve Police Groups were formed on the standard pattern of India Reserve Battalions. However, the standard pattern of the India Reserve Battalion was not considered suitable for the State Reserve Police Force Groups of the State Government and, therefore, the IGP had suggested reorganization of the strength and the composition of the State Reserve Police Battalions (Groups) from officer oriented India Reserve Battalion pattern to the manpower oriented pattern with a view to providing it with adequate mobility and reducing the strength of the State Reserve Police Force Groups of the State from 9 to 7 groups and to relocate them on a more rational basis. Accordingly, the Government created from 1.4.1973 various categories of posts in the pay-scales as mentioned in Annexure I to the resolution on permanent basis. Annexure I to the resolution gave details of the various posts including the posts in administrative company and other services. In each wing immediately below the post of Platoon Commander (PSI) was the post of Head Constable Grade I and below that post of Head

Constable Grade II and still below them the post of Police Constable. Hence, when the Dy.I.G.P. referred to the designations of various posts in the memorandum dated 22.8.1977, the Dy.I.G.P. was merely following the designation of posts as provided under the Government Resolution dated 10.4.1973 which is not under challenge in this petition. As per the settled legal position, the creation and abolition of posts is an executive power over which this Court does not sit in appeal, much less over the redesignation of existing posts. It cannot, therefore, be said that the Dy.IGP acted beyond authority in referring to the designations which were different from the designations as mentioned in the original Rules.

14. The third ground of challenge is that while the original Rules permitted the constables with 7 years service to appear at the qualifying examination for the post of Head Constable Grade I, the memorandum in question confined the right to appear at the qualifying examination for promotion to the post of Head Constable Grade I only to Head Constables Grade II with two years continuous service. It is not the case of the petitioners that the constables are straightaway entitled to be considered for promotion to Head Constable Grade I without getting promotion to the immediate higher cadre of Constables Grade II as already stated above. When constables with more than 10 years service were not getting promotion to the cadre of Head Constables Grade II even after passing the qualifying examination, the Dy.I.G.P. did not see any point in permitting the constables with 7 years service to appear at the qualifying examination for promotion to Head Constables Grade I. The reasoning contained in para 12 hereinabove would apply with equal force in respect of this contention also. Hence, in this respect also, it cannot be said that by curtailing the zone of consideration, the Dy.I.G.P. acted in contravention of the Rules.

15. As far as the last ground of challenge is concerned, having gone through the syllabus prescribed by the Rules and the syllabus as referred to in the impugned circular of the Deputy Inspector General of Police, it cannot be said that they are inconsistent merely because the names of a few guns are different as alleged by the learned counsel for the petitioners.

Even otherwise, in any view of the matter, considering the fact that hundreds of employees have been promoted to the higher posts on the basis of the qualifying examinations held over a period of last twenty

years and that they are not even parties to these petitions even in a representative capacity, this Court is not inclined to grant any relief in favour of the petitioners in exercise of its extra ordinary prerogative writ jurisdiction under Article 226 of the Constitution.

16. In view of the above discussion, there is no substance in any of the contentions raised on behalf of the petitioners. The petitions, therefore, fail and are hereby dismissed. Rule is discharged in each of the petitions. There shall be no order as to costs.

(M.S. Shah, J.)

sundar